



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 13-01340
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Heintzelman, Esq., Department Counsel
For Applicant: Brian P. Cruz, Esq.

03/02/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On February 5 2014, the Department of Defense Office Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense on September 1, 2006.

Applicant answered (Ans.) the SOR on February 25, 2014. He requested a hearing before an administrative judge. The case was assigned to another

administrative judge on August 13, 2014, and reassigned to me on September 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2014, with a hearing date of December 3, 2014. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified, had one witness testify, and offered exhibits (AE) A through O, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 16, 2014.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation, but provided an explanation. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 69 years old. He has been married 32 years and has two children and two grandchildren. He received a high school diploma, took some undergraduate courses, and completed a master's program, but did not receive a degree, which is the subject of this action. He is the chief executive officer (CEO) of a nonprofit company and has held that position for 31 years. He served in the National Guard for six years in the 1960s. He has held a security clearance since 2007.¹

Applicant's conduct raised in the SOR is as follows: claiming on two security clearance applications, dated March 2007 and March 2013 that he was awarded an "MBA" (masters of business administration) degree in May 1990 when he did not earn such a degree.

Applicant is a successful businessman who is responsible for turning a company with 65 employees and a \$250,000 budget into a 5300-employee company with revenues in excess of \$280 million over the course of the last 30 years. In 1988, the board of directors (BOD) decided that Applicant should take a master's program at a local university to further his education and benefit the business. The BOD paid for the program, which encompassed four semesters worth of course work (34 credit hours during the 1988-1990 school semesters). The program was offered by the university's school of business and was called; "Master of Rehabilitation Administration (MRA)." At the time Applicant entered the program, the BOD was aware he had not obtained an undergraduate degree (which was not required for his position) and therefore would not have conferred upon him the actual MRA degree upon completion of the program. The BOD just wanted him and the company to benefit from the courses he was taking. Applicant met all the requirements of the MRA program, but he received no degree.²

¹ Tr. at 16, 22, 24, 27, 51, 61; GE 1-2.

² Tr. at 23, 29, 31-38; AE K-N.

Applicant knew that some people from the school referred to the MRA program as an MBA, since it was taught by the business school. Because Applicant had a business background, he also referred to it as an MBA. When he completed his first security clearance application in 2007, the document was initially filled out by his administrative assistant. Applicant then reviewed the document, signed, and submitted it. He readily admits that he failed to give the application the proper scrutiny he should have before he signed it as a true and accurate document when it contained erroneous information about his education. The information supplied in the 2013 application was taken from the earlier application, so the same incorrect educational information appears there as well. Applicant appeared embarrassed and sincerely remorseful that he did not take the proper time to submit accurate applications. When the investigation raised this issue, he offered his resignation to the BOD, which it rejected. He credibly testified that he did not intend to mislead the Government by erroneously stating he received an "MBA." There was no motive to embellish in this fashion since a granting of his security clearance was not dependent on having such a degree, nor was his job. Additionally, the BOD was well aware of his educational background. I find credible Applicant's testimony that he did not deliberately intend to deceive the government when he listed incorrect educational information on the two security clearance applications.³

Applicant's witness is a CEO of a large corporation who has been a member of Applicant's company BOD for 18 years. He has known Applicant for 19 years. He described Applicant as an exceptional leader, an outstanding performer as CEO, and as a trustworthy and honest person. He also stated that Applicant's reputation in all areas is impeccable. Applicant also presented character letters from seven persons, including a retired Air Force Major General and a retired Air Force Senior Executive Service (SES) civilian. Many of the letters were from former and current members of Applicant's company's BOD. All the character references describe Applicant as an outstanding leader, a top-notch CEO, and a man of tremendous integrity. Most were aware of the SOR allegation and they all universally opined that Applicant's erroneous application was unintentional on his part. They all recommended granting his security clearance. His civic awards include being named the 2012 person of the year for his city by the chamber of commerce and being named one of the ten most influential business persons in his city in 1999.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

³ Tr. at 31 37-38, 40-42 , 61; AE E.

⁴ Tr. at 74-79; AE A-G, I.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did the course work necessary to obtain the MRA, but he was ineligible for it because he did not have an undergraduate degree. Because the MRA degree was taught by the business school, it was not uncommon for it to be referred to as an MBA. I am convinced Applicant did not intend to deceive or mislead the Government when he supplied this information on the two applications. He had no motive to deceive because he had nothing to gain by claiming this degree. His BOD was familiar with his academic record and his job was not dependent on whether he held an MBA. AG ¶¶ 16(a) does not apply. Because of my conclusion, it is unnecessary to analyze the application of mitigating circumstances.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's outstanding service to his company. I also considered his demeanor and credibility while testifying about his degree status. Additionally, I considered the strong recommendation he

received from his members of his current and former BOD concerning his trustworthiness, honesty, and integrity. I also considered his service to his community and the recognition he has received because of it. Applicant's whole-person factors also weigh in favor of granting his security clearance.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge